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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,360	07/27/2001	David A. Kraft	A148 1603	9869

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EXAMINER

RHEE, JANE J

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/917,360

Applicant(s)

KRAFT ET AL.

Examiner

Jane Rhee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27,30-33,36-42 and 44-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27,30-33,36-42,44-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Rejections Withdrawn

1. The 35 U.S.C. 102(e) rejection anticipated by Shih of claims 28 and 39 are withdrawn due to applicant's amendment on 11/15/2004.
2. The 35 U.S.C. 103(a) rejection over MacLaine et al. in view of Webster's New Word Dictionary of claims 28,30,37,39,41-42,44-45 withdrawn due to applicant's amendment on 11/15/2004.
3. The 35 U.S.C. 103(a) rejection over MacLaine et al. in view of Webster's New World Dictionary and in further view of Ehrhart et al. of claims 31-33 withdrawn due to applicant's amendment on 11/15/2004.
4. The 35 U.S.C. 103(a) rejection over MacLaine et al. in view of Webster's New World Dictionary and in further view of Pacione of claims 27,36,38,40,43,46 withdrawn due to applicant's amendment on 11/15/2004.

New Rejections

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 27,36,48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 48 contradicts claim 36 wherein claim 48 states there is no portion of the gluing surfaces is perpendicular

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to the first major surface contradicts and claim 36 states that the seam being in a plane generally perpendicular to the axis of the roll.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 27,30,36,37,38,39,40,41-42, 44-46, 47,48, 50,51 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacLaine et al. and Webster's new world dictionary in view of Pacione (6298624).

As to claims 27,30,36,37,40,41 and 44, MacLaine et al. discloses a floor covering (col. 1 line 21) comprising two resilient sheet elements having substantially the same structure (figure 1 number 1 and 2 col. 2 line 1), each element comprising a first major surface and a second major surface (figure 1 number 1 and 2), and a gluing surface interposed between the first major surface and the second major surface (col. 2 line 11-12), the gluing surfaces of the two elements being adjacent (figure 1 number 8), and an adhesive interposed between the gluing surfaces (figure 1 number 8), wherein the surface covering is in the form of a roll (figure 2 number 12), the gluing surfaces and the adhesive forming a seam (figure 1 number 8), with the seam being in a plane generally perpendicular to the axis of the roll (figure 1 number 8), the gluing surfaces and

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adhesive forming a seam (figure 1 number 8), and the thickness of the seam being substantially no greater than the thickness of the elements (figure 1 number 8 and 1,2). MacLaine et al. discloses that the flooring sheet comprises a substrate (col. 2 line 8), foam layer (col. 2 line 7) and a design layer (col.2 line 4).

MacLaine et al. fail to disclose that the gluing surfaces are not perpendicular to the first major surface. MacLaine et al. fail to disclose that the gluing surfaces and adhesive created a seam in the form of a scarf joint. MacLaine et al. fail to disclose that the gluing surfaces are in a plane generally parallel to the axis of the roll.

As to claims 37,39,42, and 45, Webster's new world dictionary teaches that scarf joints are made by notching, grooving, or otherwise cutting the ends of two pieces and fastening them so that they lap over and join firmly into one continuous piece (col. 2, definition of scarf²).

Therefore, it is notoriously well known in the art to join two pieces of notched or grooved ends together so that they lap over and join firmly into one continuous piece as taught by Webster's new world dictionary, thus it would have been obvious to one ordinary skill in the art at the time applicant's invention was made to provide MacLaine et al with gluing surfaces that are not perpendicular to the first major surface such as a scarf joint in order to fasten two pieces so they lap over and join firmly into one continuous piece since it is scientifically well known in the art that scarf joints are stronger joints than butt joints because of its larger bonding area.

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As to claims 44, and 47-51, when the gluing surfaces create a seam in the form a scarf joint, the gluing surface is in a plane generally parallel to the axis of the roll, therefore, since it is obvious to one having ordinary skill in the art at the time applicant's invention was made to provide MacLaine with the notoriously well known scarf joint in order to fasten two pieces so they lap over and join firmly into one continuous piece as taught by Webster's new world dictionary (col. 2, definition of scarf²) because its well known in the art that scarf joints are stronger joints than butt joints because of its larger bonding area.

As to claims 27,38,40, and 46, MacLaine et al. and Webster's new world dictionary fail to disclose a seamless top coat layer that covers substantially the entire surface covering component, including the two elements and the seam formed by the adjacent gluing surfaces and the adhesive. Pacione teaches a resilient covering layer that covers the entire surface covering component, including the two elements and the seam formed by adjacent gluing surfaces and adhesive (figure 4 numbers 9,13,15) for the purpose of installing a decorative cover (col. 1 lines 13-17).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide MacLaine et al. with a covering layer that covers the entire surface covering component, including the two elements and the seam formed by adjacent gluing surfaces and adhesive in order to install a decorative cover (col. 1 lines 13-17) as taught by Pacione.

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7. Claims 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacLaine et al. and Webster's new world dictionary and in further view of Ehrhart et al. (5140088).

MacLaine et al. and Webster's new world dictionary discloses the surface covering described above. MacLaine et al. and Webster's new world dictionary fail to disclose a radiation curable and UV curable adhesive, wherein the adhesive is cyanoacrylate. Ehrhart et al. teaches resilient vinyl floor coverings (col. 1 lines 15-23) with the adhesive cyanoacrylate for the purpose of preventing the buildup of dirt and penetrations of moisture between the seams of the surface coverings (col. 1 lines 62).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide MacLaine with the adhesive cyanoacrylate in order to prevent the buildup of dirt and penetrations of moisture between the seams of the surface coverings (col. 1 lines 56-62) as taught by Ehrhart et al.

Response to Arguments

8. Applicant's arguments filed 11/15/2005 have been fully considered but they are not persuasive.

In response to applicant's argument that MacLaine et al. does not disclose a seamless wear layer, Pacione teaches a resilient covering layer that covers the entire surface covering component, including the two elements and the seam formed by adjacent gluing surfaces and adhesive (figure 4 numbers 9,13,15) for

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the purpose of installing a decorative cover (col. 1 lines 13-17). Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide MacLaine et al. with a covering layer that covers the entire surface covering component, including the two elements and the seam formed by adjacent gluing surfaces and adhesive in order to install a decorative cover (col. 1 lines 13-17) as taught by Pacione.

In response to applicant's argument that claims 44 and 45 require the seam to be in a plane generally parallel to the axis of the roll and MacLaine is in a plane generally perpendicular to the axis of the roll and not parallel to the axis of the roll, as to claims 44, 45 and 47-51, when the gluing surfaces create a seam in the form a scarf joint, the gluing surface is in a plane generally parallel to the axis of the roll, therefore, since it is obvious to one having ordinary skill in the art at the time applicant's invention was made to provide MacLaine with the notoriously well known scarf joint in order to fasten two pieces so they lap over and join firmly into one continuous piece as taught by Webster's new world dictionary (col. 2, definition of scarf²) because its well known in the art that scarf joints are stronger joints than butt joints because of its larger bonding area.

In response to applicant's argument that the composition of Ehrhart is not an adhesive but used as a seam coater or sealer and not as an adhesive, Ehrhart discloses on col. 6 line 55 that the seam coater results in edge to edge adhesion as well as adhering a coating on the top of the seam, therefore, the composition of Ehrhart is an adhesive.

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In response to applicant's argument that Pacione fail to disclose a wear layer or any other layer covering a seam form by two gluing surfaces and adhesive, Pacione teaches a resilient covering layer that covers the entire surface covering component (figure 4 number ¹⁵~~16~~), including the two elements and the seam formed by adjacent gluing surfaces and adhesive (figure 4 numbers 9,13). Applicant further argued that Pacione discloses carpet pieces and not a resilient layer to cover substantially the entire surface covering. Pacione discloses in col. 9 lines 12-30 that carpet can be cut and fit and adjusted in place and abutted against another carpet roll. Although Pacione discloses that the carpet which is the wear layer comes in many pieces, the carpet pieces combined together is still one layer that covers substantially the entire surface covering including two elements and the seam formed by the adjacent gluing surfaces and the adhesive.

Applicant argues that carpet is not a seamless resilient wear layer by the definition provided by the applicant, however, the definitions provided by the applicant defines the resilient flooring with a wearing surface which is non textile and the wearing surface disclosed by McLaine is vinyl which is non textile. The term "wear layer" was defined by the definition provided by the applicant as "the portion of a resilient floor covering that contains or protects the pattern effect". Applicant emphasizes the term "resilient flooring" in the definition but fails to realize that the term "wear layer" is directed the "resilient floor *covering*" and not the resilient floor itself. The covering for a resilient flooring does need to be "nontextile" however, the wearing surface of the resilient flooring does as defined

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by the definition of "resilient flooring" as provided by the applicant. As to carpet being a seamless, resilient wear layer, carpet is notoriously well known in the art to be a seamless, resilient wear layer since Pacione uses the carpet as the top most layer wherein the top layer is the wear layer. Carpet is also well known in the art to be perfectly consistent¹ and capable of returning to an original shape or position, as after having been compressed² as defined by the definitions of seamless and resilient. Therefore, Pacione does disclose a seamless, resilient wear layer (figure 4 number 15).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory

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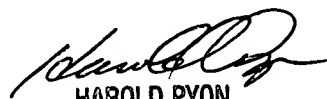
action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jane Rhee
January 28, 2005


HAROLD PYON
SUPERVISORY PATENT EXAMINER
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2/7/05